IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 819 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOLI MADHU RANCHHOD - Appellant(s)
Versus
KISHORBHAI JERAMBHAI BHANUSALI & 2 - Defendant(s)

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Appearance :
MR MANAV A MEHTA for Appellant(s) : 1,
MR AP MEDH for Respondent Nos.1 and 2 is absent.
NONE for Respondent No.3 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/06/2007

ORAL JUDGMENT

1. Mr.Manav A. Mehta, learned counsel for the appellant. The name of Mr.A.P. Medh appears for the respondent Nos.1 and 2, but there is no representation. The respondent No.3

served, but is unrepresented.

1. The appellant / claimant, being partly aggrieved by the judgment and Award dtd.29/4/1982 passed by the learned Member, Motor Accident Claims Tribunal (Auxi.), Surendranagar in Motor Accident Claim Petition No.30 of 1981, is before this Court with a submission that the claim could have been awarded in toto and the tribunal was unjustified in capping to the tune of Rs.31,000=00 only.
2. The records do not show that any Cross-Appeal or Cross-Objection has been filed either by the owner, driver or Insurance Company. In such a case, in absence of any challenge the the liability / responsibility of the driver, owner and Insurance Company, the Court will have to hold that the claimant has proved that he suffered injuries in the accident.
3. Mr.Mehta, learned counsel for the appellant submits that the tribunal even in absence of any evidence contrary to the evidence of the claimant, just on surmises and conjectures observed that the yearly income of the appellant / claimant would be Rs.4000=00 and as he has suffered 25% disability, he would be entitled to Rs.1000=00 per year towards future loss of earning and consequently, he would be entitled to Rs.15000=00 only. He also submits that the tribunal was absolutely unjustified in holding that despite the fracture of both the legs and deformity in the body, the claimant would not find difficulty in carrying out his agricultural operations.

He also submits that the tribunal was unjustified in awarding compensation treating yearly income at Rs.4000=00, when the evidence on the record clearly establishes that the income of the claimant could not be less than Rs.7000=00 per year.

4. From the evidence on the record, it appears that the claimant was contending that he was engaged in the work of sinking well and he could earn at least Rs.3000=00 to Rs.4000=00 from that work. Similarly, it has come on the record that after the water had receded, he used to obtain the land for the purpose of cultivation and by selling vegetables, he was earning an amount of Rs.3000 to Rs.4000=00 per year. The tribunal ha simply observed that the figures are exaggerated. Even in absence of any evidence, the tribunal has observed that when a man carries out agricultural operations, his family including his wife and children also help and assist, the learned tribunal, in the opinion of this Court, did not try to appreciate that the loss of the income was to be assessed qua the appellant / claimant and if he says that he was earning around Rs.3000=00 to Rs.4000=00 per year by vending vegetables and was also earning an amount of Rs.3000=00 to Rs.4000=00 by engaging in the business of sinking well, then there was no reason for the tribunal not to accept even the lower figure.

5. After going through the records and the statements given by the claimants, I hold that his yearly income would be

Rs.6000=00 per year. From the records, it would again appear that the claimant had suffered disability to the extent of 40%. If 40% permanent partial disability would disable him from carrying out business of sinking well, then such deformity and permanent partial disability would disable him from using his full force and strength in cultivation and vending vegetables. Despite the clear opinion of the Doctor that the permanent partial disability was to the extent of 40%, the tribunal erred in holding that the appellant / claimant had suffered 25% disability and the loss of the future income would be only to the extent of Rs.1000=00 per year. In the opinion of this Court, future loss had to be assessed at 40% of the yearly income which, in the opinion of this Court, would be Rs.2400=00 per year applying multiplier of 15. Looking to the age of the claimant, I further hold that the future loss of the income would be Rs.36000=00. The claimant, in the opinion of this Court, would be entitled to Rs.36000=00 under the said head. Other amounts awarded by the learned tribunal appear to be reasonable.

6. In view of the discussion aforesaid, I hold that in addition to the amount of Rs.31,000=00, the appellant / claimant would be entitled to an additional amount of Rs.21,000=00 and his total entitlement would be Rs.52,000=00. On the additional amount of Rs.21,000=00, the appellant / claimant would be entitled to interest at the rate of 9% per annum from the date

of the claim petition till the recovery.

7. The appeal is allowed to the extent indicated above. No costs.

(R.S. GARG, J.)

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